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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901. 1902.

No. 242 43.

THE NORTHERN CENTRAL RAILWAY COMPANY, PLAINTIFF IN ERROR,

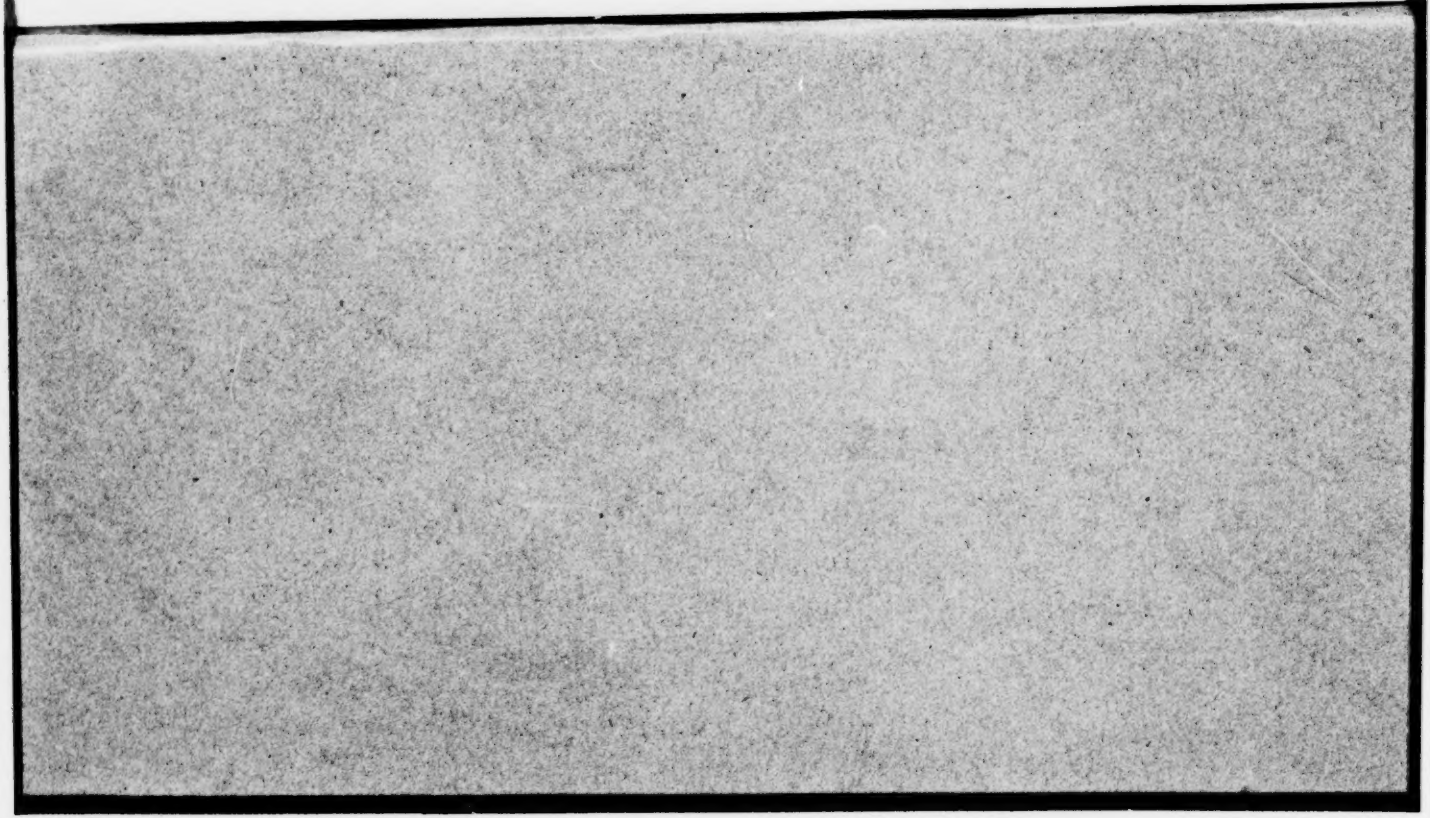
vs.

THE STATE OF MARYLAND.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF MARYLAND.

FILED JANUARY 9, 1901.

(18,037.)



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1 In the Court of Appeals of Maryland.

Petition, Order, and Assignment of Errors.

THE NORTHERN CENTRAL RAILWAY COMPANY, Appellant, *vs.* THE STATE OF MARYLAND, Appellee. } Petition for Writ of Error.

Appeal from the superior court of Baltimore city.

Comes now the appellant, The Northern Central Railway Company, and says that on the 7th day of December, 1900 judgment in this case was entered by this court in favor of the appellee and against the appellant, by which said judgment the appellant was aggrieved in that in said judgment and the proceedings had prior thereto
2 in this case, certain errors were committed to the prejudice of this appellant, all of which will appear more in detail from assignment of errors filed with this petition. Wherefore the appellants prays that a writ of error may issue to the Supreme Court of the United States for a correction of the errors complained of, and that a duly authenticated transcript of the record proceedings and papers herein may be sent to the said Supreme Court of the United States.

BERNARD CARTER,
Att'y for the Northern Central Railway Company.

STATE OF MARYLAND:

Desiring to give the petitioners an opportunity to test in the Supreme Court of the United States the questions presented in
3 the aforegoing petition, and in the assignment of errors filed therewith, it is hereby ordered that a writ of error be allowed to said court and that the same be made a supersedeas, upon filing by the petitioner of a bond in the penal sum of twenty thousand dollars in the form, and with a surety, to be approved by me.

In testimony whereof, witness my hand this twenty-ninth day of December, 1900.

JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

4 UNITED STATES OF AMERICA:

Supreme Court.

THE NORTHERN CENTRAL RAILWAY COMPANY, Plaintiff in Error, *vs.* THE STATE OF MARYLAND, Defendant in Error. } Assignment of Errors.

In the case, in the court of appeals of Maryland begun and holden at Annapolis in the State of Maryland on the 1st Monday of October

1900, wherein the said The Northern Central Railway Company was appellant, and The State of Maryland was appellee, and wherein final judgment was entered in favor of the said appellee against the said appellant, (and said court being the highest court of law and equity of the said State in which a decision could be had in
5 the said case) upon the writ of error allowed upon the said judgment returnable to the October term of the Supreme Court of the United States to be begun and holden in the city of Washington in the District of Columbia, on the 2nd Monday of October, 1901, the said The Northern Central Railway Company, the plaintiff in error, makes the following assignment of errors committed by said court of appeals of Maryland, as appears by the record in the said case; that is to say, that although by a statute of the State of Maryland, to wit, the act of the General Assembly of Maryland of 1880, chapter 16, and by the acceptance thereof by the said plaintiff in error, and the doing of all the things required of it by the terms of said act of assembly of said State, a valid contract, upon legal and valuable consideration, was entered into between The State of Maryland,
6 the defendant in error, and The Northern Central Railway Company, plaintiff in error, whereby the State agreed that no tax should ever be imposed under the laws of said State upon the property, franchises or gross receipts of the plaintiff in error, except an annual tax of one-half of one per cent. on the gross receipts of the company within the State of Maryland; and although said contract was irrevocable, except upon the assent of both parties to it, and so is within the provisions and protection of the tenth section of the first article of the Constitution of the United States; yet, nevertheless, the said State of Maryland by a statute of said State, to wit, the act of the General Assembly of Maryland of 1890, chapter 559, in the record in said case fully set forth, imposed a greater tax than one-half per centum per annum on the
7 gross receipts of the plaintiff in error within the State of Maryland—that is to say, it imposed a tax of one per centum per annum on said gross receipts for each and every year, and so impaired the contract made as aforesaid between the State of Maryland and the plaintiff in error; and by the determination and judgment of said court of appeals of Maryland, to review which said writ of error has been sued out, allowed, and is prosecuted, it is determined and adjudged that the said statute of the State of Maryland, to wit, the said act of 1890, chapter 559, is a valid exercise of the rightful authority of the State of Maryland, and that the said last-mentioned act of assembly validly imposed upon the plaintiff in error a tax of one per centum per annum upon its gross receipts within the State of Maryland, and validly ab-
8 rogated the contract made between the said State of Maryland, and the plaintiff in error by the passage of the said act of the General Assembly of Maryland of 1880, chapter 16, and the acceptance thereof and performance of the terms and conditions thereof by the plaintiff in error; and that the said statute of

said State, to wit, the act of 1890, chapter 559, is not contrary to the provisions of the Constitution of the United States of America.

And the plaintiff in error says that the rulings, determinations and judgment of the said court of appeals of Maryland, contained in and shown by the said record, in respect of the construction and interpretation of the contract made between the State of Maryland and the plaintiff in error by the said act of assembly of Maryland
9 of 1880, chapter 16, and in reference to the right and power of the State of Maryland to abrogate and annul the same, and in sustaining the validity of the said statute of the said State, to wit the act of the General Assembly of Maryland of 1890, chapter 559, are repugnant to the provisions of section 10 of article one of the Constitution of the United States, which provides that no State shall pass any law impairing the obligation of contracts.

There is error also in this, to wit, that by the record aforesaid it appears that the judgment aforesaid, in form aforesaid given, was given for the State of Maryland against the said The Northern Central Railway Company, whereas by the law of the land the said judgment ought to have been given for the said railway com-
10 pany, and against the said State of Maryland, and the said The Northern Central Railway Company prays that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings and the matters herein set forth, may be reversed, annulled, and held for nothing, and that it may be restored to all things which it has lost by occasion of said judgment.

THE NORTHERN CENTRAL RAILWAY COMPANY.
By BERNARD CARTER, *Its Attorney.*

Filed Dec. 31st 1900.

11 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the court of appeals of the State of Maryland, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals of the State of Maryland, before you or some of you, being the highest court of law and equity of the said State in which a decision could be had in the said suit, between the State of Maryland and the Northern Central Railway Company, wherein was drawn in question the validity of, or an authority exercised under, said State, on the ground of their being repugnant to the Con-
12 stitution of the United States, and the decision was in favor of such their validity, a manifest error hath happened, to the great damage to the said The Northern Central Railway Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command

you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that, the record and proceedings aforesaid
13 being inspected, the said Supreme Court may further cause to be done therein for the correction of that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the circuit court of the United States for the district of Maryland, the thirty-first day of December, in the year of our Lord one thousand nine hundred.

[Seal of the U. S. Circuit Court, Dist. of Maryland.]

JAS. W. CHEW,
Clerk U. S. Circuit Court for the District of Maryland.

Allowed by—
JAMES McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

Filed Dec. 31st 1900.

14 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To the State of Maryland, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the court of appeals of the State of Maryland, wherein The Northern Central Railway Company is plaintiff in error, and you are the defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

15 Witness the Honorable James McSherry, chief judge of the court of appeals of Maryland, this 15th day of January, in the year of our Lord one thousand, nine hundred and one.

JAS. McSHERRY,
Chief Judge of the Court of Appeals of Maryland.

We hereby certify that on this 17th day of January, one thousand, nine hundred and one, there was delivered to me a true copy of the above citation.

GEORGE R. GAITHER, JR.,
Attorney for State of Maryland, Defendant in Error.

Filed January 21st 1901.

16 *Record.*

In the Court of Appeals of Maryland.

THE STATE OF MARYLAND
vs.
THE NORTHERN CENTRAL RAILWAY COMPANY. } No. —.

Appeal from the superior court of Baltimore city.

Att'y General Gaither, for State.
Bernard Carter, for appellee.

Filed September 14, 1899.

17 *Record.*

In the Court of Appeals of Maryland.

THE STATE OF MARYLAND
vs.
THE NORTHERN CENTRAL RAILWAY COMPANY. } Appeal from the Superior Court of Baltimore City.

Appeal to October term, 1899.

George R. Gaither, Jr., for appellant.
Bernard Carter, for appellee.

Filed: —— —, 1899.

18 In the Superior Court of Baltimore City.

THE STATE OF MARYLAND
vs.
THE NORTHERN CENTRAL RAILWAY COMPANY. }

Appeal from the superior court of Baltimore city.

Action commenced September 25th, 1896.

Declaration.

BALTIMORE CITY, *To wit:*

In the Superior Court of Baltimore City.

The State of Maryland, plaintiff, by George R. Gaither, Jr., attorney, sues The Northern Central Railway Company, a body corporate, duly incorporated, defendant:

1. For the defendant has refused and neglected to pay and still owes the State tax of one per centum upon the gross receipts of the said company within the State of Maryland, duly levied and assessed against it for the year 1896, amounting to $13,142.35, with interest thereon from the 1st day of July, 1896, and with an ad-

ditional amount of five per centum upon the amount of said tax, as provided for by Acts of 1890, chapter 559. And the plaintiff claims $16,000.

GEORGE R. GAITHER, JR.,
Attorney for the Plaintiff.

19 *Account and Certificate of Comptroller.*

Filed with declaration.

State tax on gross receipts.

The Northern Central Railway Company to State of Maryland, Dr.

To State tax of one per centum on $1,314,234.52, being the gross receipts of the said company within the State of Maryland, for the year ended January 31st, 1896..... $13,142.35

☞ By the act of 1890, chapter 559 it is provided that it shall be the duty of the comptroller of the treasury to receive such accounts of State taxes so transmitted to him by the State tax commissioner, and forthwith to proceed to notify each such corporation or company of the amount of such State tax. Any corporation or company feeling aggrieved at the ascertainment or assessment of the State tax commissioner, may appeal within 30 days to the comptroller and treasurer, who shall hear such appeal and decide finally upon such ascertainment or assessment. If no appeal is taken within 30 days from the date of such notification, the said ascertainment or assessment of the State tax commissioner shall be final. That such taxes shall be due and payable on or before the first day of July in each year, and that if any such corporation or company from whom such taxes shall be due on its gross receipts or revenues as aforesaid, shall fail or neglect to pay the same to the treasurer of the State for the space of one month after the same shall be due and payable, such corporation or company shall for such failure or neglect forfeit and pay to the State of Maryland an additional amount of 5 per centum as penalty or damages.

STATE OF MARYLAND:

TREASURY DEPARTMENT,
COMPTROLLER'S OFFICE, ANNAPOLIS, MD.

I hereby certify that the aforegoing is a true copy taken from the original on file in the office of the comptroller of the State of Maryland.

Witness my hand and official seal this 21st day of Sept., A. D. 1896.

[SEAL.]

ROBERT P. GRAHAM,
Comptroller of the Treasury.

20 *Docket Entries.*

October 12th, 1896.—Appearance by attorney and plea not indebted as alleged short, and issue joined.

November 30th, 1898.—Case tried before Hon. J. Upshur Dennis, without a jury.

Opinion.

Filed June 6, 1899.

By chapter 72 of the Acts of 1827, the Baltimore and Susquehanna R. R. Co. was incorporated, and by one of the provisions of that act, it was stipulated that its property should be exempt from taxation.

The act of 1854, ch. 250, incorporated the present defendant, consolidating it with the Baltimore & Susquehanna R. R. Co., and granting it all the rights, franchises and immunities possessed by the latter company.

By the Acts of 1872, ch. 234, and 1874, ch. 408, a tax of one-half of one per cent. was levied annually upon the gross receipts of all steam railroad companies, incorporated by this State and doing business herein.

To the payment of this tax the defendant objected, claiming that by virtue of its possession of all the immunities of the Baltimore & Susquehanna R. R. Co., whose property was expressly declared to be free from all taxation, it had fallen heir to this exemption; while in behalf of the State it was contended that the effect of the act of 1854, incorporating the defendant, was to create a new corporation, which derived all its rights and franchises by virtue of, and under, the new grant—that the right to exemption of its property from taxation which it had acquired by reason of its ownership of the privileges and immunities of the Baltimore and Susquehanna R. R. Co., was held under this new grant; and that the constitution of 1851, having made all charters granted subsequently repealable, or subject to modification, at the will of the legislature, and this right to exemption having been acquired by this subsequent charter (to wit, the act of 1854), was subject to repeal by the legislature, and had been repealed by the acts of 1872 and 1874; and that, therefore, the property of the defendant was subject to the tax imposed by those acts.

A suit was brought by the State to enforce this tax; the lower court decided in favor of the contention of the company, but the court of appeals reversed this decision, sustained the claim of the State, and remanded the case for further proceedings, Judge Alvey dissenting in an elaborate opinion. State *vs.* N. C. R. R. Co., 41 Md.

21 While this was the status of the litigation, and before any further steps were taken by the counsel for the State to render this decision effective, the act of 1880, ch. 16, was passed; and the true construction, and validity of this act, are the questions now before us for determination.

In construing a statute, in order to arrive at the true intention of

thelegislature, we must look to the whole of it—the preamble, as well as the full text. In fact, the preamble has been called the "key to the construction," and in this case, it seems to me to throw light upon, and make clear, not only the intention of the legislature, but every provision that might otherwise, by forced construction, appear in any way doubtful.

The preamble recites the respective claims of the State and of the company (the claim of the State being that, by reason of the fact that the act of 1854, ch. 250, was passed during the existence of the constitution of 1851, the exemptions thereby granted were repealable, and had been repealed; the claim of the company being to the contrary); and then further recites, that the State, instead of leaving the question to be decided by the Supreme Court of the United States preferred a settlement and compromise of the matter in controversy and litigation; and that the company was willing, in settlement of said matters, to pay an annual tax of one-half of one per cent. on the gross receipts of the company within the State, upon the terms and conditions set forth within the act. The act then provided that the company should have all the powers, rights, privileges and immunities, and be subject to all the duties and obligations granted to the Baltimore & Susquehanna R. R. Co., under the act of 1827, ch. 72; but with this limitation that the property, franchises and gross receipts of the company shall be subject to State taxation, to the extent of one-half of one per cent. on the gross receipts of the railroad and its branches, lying within the State of Maryland, and from all other sources within said State; and that said property and franchises and gross receipts should not be subject to any other tax under the laws of Maryland. It was further provided that before the act should become binding upon the State, it must be specifically accepted by the company in evidence of its assent thereto, and that the company should make certain money payments, fixed by other provisions of the act.

The acceptance by the company of this act, and payments of money provided for under it, are conceded.

In my judgment this act was a contract between the State and the defendant company, forever binding until abrogated by the consent of both parties to the contract, and in no way subject to
22 repeal or modification by the act of any subsequent legislature; and, therefore, the assessment acts of 1896, by which a greater tax was imposed upon the gross receipts of the company, is void, because repugnant to the Constitution of the United States, which forbids a State from passing a law impairing the obligation of a contract.

That the State has a right to make such a contract, seems clear. Its powers are limited only by the Constitution of the State and of the United States; and when, in its judgment, for the reasons set forth in the act, it considered the settlement a proper one for the State, its judgment is conclusive.

That the contract was supported by a sufficient consideration, moving from the company, appears on the fact of the act. It was a settlement of all disputed questions between the State and the com-

pany, under which the company paid a large sum to the State, agreed to pay forever an annual tax of one-half of one per cent. on its gross receipts, to abandon its claim to exemption from taxation, and its right to have decided by the Supreme Court of the United States the question as to whether it was bound to pay anything at all. Leaving out the money payments, the settlement of a doubtful claim, or relinquishment of a pending suit, is a good consideration for a contract; and it is sufficient if the parties thought at the time there was a *bona fide* question between them, although it may eventually turn out there was no such question in fact.

Hartte *vs.* State, 27 Md., 172. L. R., 5 Q. B., 541.
Callisher *vs.* Bis.

The argument that because the right of the company to take the case to the Supreme Court, at the time of the passage of the act of 1880, had not matured, is of no weight. It is true that, the litigation was not then in a state in which the company could have taken an appeal; the situation because of technical reasons, was not ripe for it; but it is undeniable that the company had at all times a reserved right, under which they could, at the proper time, have had the question in dispute between it and the State passed upon by the Supreme Court of the United States; and this right, they forever abandoned by accepting the compromise of the act of 1880.

If then the act of 1880 was a contract duly entered into by the parties—was a contract which both parties were fully competent to make—and was supported by a sufficient consideration, upon what principle can it be repealed, without the consent of both parties to it? And yet the act of 1896, does, according to the contention of the learned counsel for the State (and in this much of his contention I concur), undertake to repeal this compromise act of 1880, in so far as the rate of taxation is concerned, and to subject the gross
23 receipts of the company to a much higher rate of taxation, without restoring to the company any of the advantages which passed to the State under the act of 1880, and when the company, by accepting the provisions of said act, has forever lost its right to have the question of the right of the State to tax it at all, by reason of the act of 1827—incorporating the Baltimore & Susquehanna Railroad Co.—passed upon by the Supreme Court of the United States.

The learned counsel for the State contends that one legislature cannot make an exemption from taxation so as to be unrepealable by a future legislature. This is true, in this State since the constitution of 1851, where the exemption is granted in a charter; in such a case, the charter is accepted by the company subject to this reserved right of repeal or modification, a provision first ingrafted upon our organic law by that constitution, and secured by our several subsequent constitutions; but where the company has been duly chartered, and where the exemption from taxation is provided for in a contract between the State and the company, which contract is based upon new and sufficient consideration, and is in all other respects legal, a clause of exemption from taxation is just as binding and effective as any other provision of the contract. Learned judges have

often expressed regret that it should be in the power of one legislature to thus barter away the sovereign power of taxation so as to be beyond the remedial action of a subsequent legislature; but no case has been cited in which the right to nullify such an exemption where it is secured by contract between the State and company has been upheld.

As has been said, if this exemption had been simply contained in the charter, it would be repealable by reason of the constitutional provision; and while every charter is commonly said to be a contract between the State and the incorporators (very inaccurately so stated, according to the true definition and idea of a contract and charter respectively, as now adopted by the best authorities,) yet, even if it be conceded that a charter is a contract, it by no means follows that every contract is a charter, or modification of a charter, even though such contract may have reference to some of the sovereign powers of the State.

In the present case, it is clear that the act of 1880 was neither a charter nor modification of the defendant's charter. It invested it with no additional corporate powers or rights; it left them unaltered as they stood; and simply provided that, for consideration satisfactory to the State which were offered by the company, the State would subject its property to a certain fixed method and rate of taxation. The constitutional provision was never intended to interfere with the right of the State to enter into such contracts when it
24 deemed it proper to do so for its own benefit and protection; and such a contract is just as obligatory upon the State as if it was made between it and a private person; and cannot be repealed, under the provision of the Constitution of the United States forbidding the State to pass any law impairing the obligation of contracts, without the consent of both parties to it.

I agree with the learned counsel for the State in his construction of the act of 1890, ch. 559, and the assessment act of 1896, and think these acts were intended to repeal, and that the repealing language used is broad enough to cover, the exemption claimed by the defendant under the act of 1880; but, it is unnecessary to go at length into the reasons for this conclusion, in view of the ruling on the question discussed above.

I will, therefore, reject the prayers of the plaintiff and the second prayer of the defendant, and grant the defendant's first prayer.

J. UPSHUR DENNIS.

(Inserted per verbal order of plaintiff's attorney.)

Order of Court and Statement of Counsel for Defendant.

Filed 10th July, 1899.

Mr. Clerk:

Enter a verdict in favor of the plaintiff for the sum of sixty-five hundred and seventy-one dollars and seventeen cents.

J. UPSHUR DENNIS.

BALTO., *July* 6, 1899.

The above-mentioned amount $6,571.17 is the correct amount of verdict under rulings of the court.

BERNARD CARTER,
Att'y for Def.

Docket Entries.

July 10th, 1899.—Verdict for plaintiff for $6,571.17 and judgment on verdict.

25 *Plaintiff's Order for Appeal and Affidavit.*

Filed July 10th, 1899.

Mr. Ogle, clerk:

Enter an appeal on behalf of The State of Maryland, plaintiff, from the judgment in this case, to the court of appeals of Maryland.

GEORGE R. GAITHER, JR.,
For State.

STATE OF MARYLAND, *Baltimore City,* } *To wit:*

I hereby certify that on this 10th day of July, in the year eighteen hundred and ninety-nine, before the subscriber, the clerk of the superior court of Baltimore city, personally appeared George R. Gaither, Jr., attorney general of the State of Maryland, and made oath in due form of law, that the appeal taken in the said above-entitled case by the State of Maryland, is not taken for delay.

ROBERT OGLE,
Clerk Superior Court of Baltimore City.

Plaintiff's Bill of Exceptions.

Filed July 10th, 1899.

At the trial of the above-entitled case the plaintiff offered in evidence the certificate of the comptroller of the State of Maryland, setting forth the indebtedness of the defendant, as follows:

(NOTE.—The certificate of the comptroller herein called for is annexed to the account filed with the declaration, hereinbefore inserted.)

The plaintiff then offered in evidence the act of assembly of Maryland of 1890, chapter 559.

The plaintiff then offered in evidence a certificate of the docket entries of cases Nos. 59 and 60 in the October term, 1875, of the court of appeals of Maryland, brought by the State of Maryland against the Northern Central Railroad Company, in which cases the judgments of the superior court of Baltimore city in favor of the said company were reversed by the court of appeals, and a new trial ordered by the court on the 2d day of March, 1876; also the docket entries in said cases in the superior court for Baltimore city,

showing that no new trial had taken place in said cases, and that said cases were pending in January, 1880.

26 The plaintiff, having closed its testimony, the defendant then to support the issues on its part, offered in evidence the act of assembly of Maryland of 1854, chapter 250; the act of assembly of Maryland of 1872, chapter —, and the act of assembly of Maryland of 1874, chapter —.

The defendant further offered in evidence the act of assembly of Maryland of 1880, chapter 16, which last-mentioned act of assembly of Maryland was admitted in evidence, subject to exception by the plaintiff.

The defendant thereupon read in evidence the said act of assembly of Maryland, 1880, chapter 16:

An act to adjust and settle finally, by agreement, all pending controversies between the State of Maryland and the Northern Central Railway Company, by subjecting the franchises and property of said company within this State to taxation for State purposes to a certain extent, and by providing for the payment of a certain indebtedness claimed by the State of Maryland to exist on the part of said Northern Central Railway Company to said State of Maryland, being an act supplementary to the act of eighteen hundred and fifty-four, chapter two hundred and fifty, entitled An act to authorize the consolidation of the Baltimore and Susquehanna Railroad Company with the York and Maryland Line Railroad Company, the York and Cumberland Rail— Company, and the Susquehanna Railroad Company, by the name of the Northern Central Railway Company.

Whereas, a controversy has arisen and exists between the State of Maryland and the Northern Central Railway Company in reference to the rights of the State of Maryland to subject to taxation the franchises and property of the Northern Central Railway Company, the said company claiming exemption of the same from taxation upon the grounds that among the terms and conditions of the union and consolidation of the several companies by which said Northern Central Railway Company was formed is one; that the latter should have all the rights, privileges and immunities of each of said companies, which said terms were entered into under the authority given by the act of Maryland of eighteen hundred and fifty-four, chapter two hundred and fifty, which moreover declared that said Northern Central Railway Company should have all the powers and privileges expressed in the charter granted by the State of Maryland to the Baltimore and Susquehanna Railroad Company, among which privileges was immunity from taxation.

And whereas, the State of Maryland having, by the act of eighteen hundred and seventy-two, chapter two hundred and thirty-four, and the act of eighteen hundred and seventy-four, chapter four

27 hundred and eight, imposed an annual tax of one-half of one per centum on the gross receipts of all railroad companies worked by steam incorporated by or under the authority of said State of Mary-

land, and claiming that under said acts the gross receipts of said Northern Central Railway Company are liable to said tax, have instituted suits to recover the same.

And whereas, the property of said company has been also assessed as liable to taxation for county and municipal purposes.

And whereas, the said company has the right to have the question at issue between it and the State of Maryland carried to the Supreme Court of the United States to be there decided.

And whereas it has been represented to this General Assembly that what would be the ultimate decision of said question is a matter of great doubt, and it is deemed to be moreover just and proper that an equitable settlement should be made of the matters so in controversy and it having been represented to this General Assembly that the said Northern Central Railway Company, for the purpose of making such settlement, is willing to pay a tax of one-half of one per centum on the gross receipts within this State, upon the terms and conditions hereinafter set forth; now, therefore—

SECTION 1. Be it enacted by the General Assembly of Maryland, That the Northern Central Railway Company shall have and possess all the powers, rights, privileges and immunities, and be subject to all the duties and obligations which are expressed in the act of assembly of Maryland of eighteen hundred and twenty-seven, chapter seventy-two, entitled An act to incorporate the Baltimore and Susquehanna Railroad Company, but all the franchises and property of every description and gross receipts of said Northern Central Railway Company, within the State of Maryland, shall be subject to taxation for State purposes to the extent of an annual tax of one-half of one per centum upon the gross receipts from its railroad and branches lying within the State of Maryland, and from all other sources within this State, and said franchises, property and gross receipts shall not be subject to any other tax under the laws of the State of Maryland; provided, however, that all such property, works and structures of the said Northern Central Railway Company, which are or may be taxable within the meaning of the decision of the court of appeals of Maryland rendered in the year eighteen hundred and seventy-eight in the case of the State of Maryland against the Baltimore and Ohio Railroad Company, shall be subject to taxation for county and municipal purposes in the same way and to the same extent as the property of individuals.

SEC. 2. And be it further enacted, That this act shall not take effect until the said The Northern Central Railway Company
28 shall have paid to the treasurer of the State of Maryland the sum of twenty-nine thousand seven hundred and sixty-two dollars and fifty-six cents, as mentioned in the third section of this act, nor until this act and all its provisions shall have been accepted in the mode prescribed in the fourth section hereof.

SEC. 3. And be it further enacted, That the payment of the sum of twenty-nine thousand seven hundred and sixty-two dollars and fifty-six cents mentioned in the second section of this act shall be made by said Northern Central Railway Company to the treasurer of the State of Maryland, on or before the first day of July, eighteen

hundred and eighty, and the said treasurer shall receive said sum from said company; and the said sum of twenty-nine thousand, seven hundred and sixty-two dollars and fifty-six cents, when so paid, is hereby declared to be in full satisfaction and discharge of all claims arising under the laws of the State of Maryland for taxes against said company up to December thirty-fi-st, eighteen hundred and seventy-nine, saving and excepting taxes for municipal and county purposes upon the property mentioned in the proviso to the first section of this act.

SEC. 4. And be it further enacted, That the acceptance of this act mentioned in the second section thereof shall be made by the stockholders of said Northern Central Railway Company at a general meeting of the same, the acceptance to be evidenced by an instrument of writing under the corporate seal of said company, which shall be filed in the office of the secretary of State of Maryland.

SEC. 5. And be it further enacted, That upon the compliance of said Northern Central Railway Company with the provisions of the third and fourt- sections of this act, all claims against said Northern Central Railway Company for taxes assessed under any law of the State of Maryland and unpaid by it up to December thirty-fi-st, eighteen hundred and seventy-nine, except municipal and county taxes upon the property mentioned in the proviso to the first section of this act, are hereby declared to be discharged, and all suits or other proceedings heretofore instituted for the enforcement of the payment by said Northern Central Railway Company of taxes shall be dismissed and abandoned on the payment of costs by said company.

SEC. 6. And be it further enacted, That this act shall take effect from the date of its passage, subject nevertheless to all the conditions and limitations in reference to the provisions of said act which are therein set forth.

Approved February 25, 1880.

29 The defendant further offered in evidence the following agreement of counsel:

It is agreed in this case, subject to any objection which may be made by the plaintiff as to its relevancy, as follows:

1. That the sum of $29,762.50, mentioned in the act of assembly of Maryland of 1880, chapter 16, was paid to the treasurer of the State of Maryland before the first day of July, 1880, in accordance with the requirements of the said act of assembly.

2. That the said act of assembly was duly accepted by the stockholders of the Northern Central Railway Company at a general meeting of the said stockholders; and that the said acceptance was evidenced by an instrument of writing under the corporate seal of the said company, which was filed in the office of the secretary of state, before the 1st day of July, 1880. And that the said company from and after the passage of said act paid in each year ½ of one per cent. on its gross receipts described in said act, up to and including

the year ending December 31, 1889, under the terms of the act of 1874, chap. 408.

GEORGE R. GAITHER, JR.,
Att'y for Pl'ff.
BERNARD CARTER,
Att'y for Def't.

The defendant also proved by competent testimony that from the time of the passage of the act of 1880, chapter 16, up to and including the year 1890, the defendant paid in each year one-half of one per cent. on its gross receipts from its railroads and branches lying within the State of Maryland, and from all other sources within said State.

The defendant further proved that after the passage of the act of assembly of Maryland of 1890, chapter 559, the defendant in the years 1891, 1892, 1893, 1894 and 1895 paid to the State of Maryland for each of said years a tax of one per cent. on its gross receipts above mentioned, but in making each of said payments, accompanied the same with a declaration that in making said payments, it in no way waived the right granted to it by the act of assembly of Maryland of 1880, chapter 16, to pay a State tax of one-half of one per cent. on its gross receipts and paying said tax, to be relieved of all other taxes whatsoever, State, county or municipal, except as stated in said act of 1880, chapter 16. The form of said declaration, as made at the time of the payment of said tax for the year 1895, was as follows: (The same form *mutatis mutandis* having been used in the previous years.)

"The Northern Central Railway Company, in calculating the tax on its gross receipts at the rate of one per cent., such being the rate fixed by the act of assembly of Maryland, 1890, chapter 559, for the rate of State tax on the gross receipts of steam railroads, and in paying the amount arrived at by said calculation, in no way waives, or is to be understood as waiving, the right granted to it by the act of assembly of Maryland of 1880, chapter 16, to pay a State tax of one-half of one per cent. on its said gross receipts, and paying said tax, to be relieved of all other taxes whatsoever, State, county or municipal, except as stated in said act of 1880, chapter 16, but on the contrary, insists and relies upon all the rights of exemption given to it by said act of 1880, chapter 16; it makes payment in this year, 1895, as it did in the years 1891, 1892, 1893 and 1894, of tax on its gross receipts of an additional one-half of one per cent. over and above what is required by law to make, as a voluntary contribution towards the revenue of the State, the said payments for said years, not hereafter to be continued, unless by the voluntary act of the said company."

The defendant further proved by competent testimony that on the 26th day of June, 1896, the defendant tendered to the treasury department of the State of Maryland the sum of six thousand, five hundred and seventy-one dollars and seventeen cents, which was one-half of one per cent. on the gross receipts of the defendant from its railroad and branches lying within the State of Maryland, and

from all other sources within said State, as the amount payable by it on its gross receipts for the year ending January 31st, 1896, and accompanied the said tender with a letter to the treasurer of the State of Maryland, dated June 26th, 1896, which letter is as follows:

Northern Central Railway Company, office of the auditor.

BALTIMORE, *June* 26, 1896.

Thomas J. Shryock, Esq., treasurer State of Maryland.

DEAR SIR: Referring to the bill sent by your department to the Northern Central Railway Company for the amount payable by it for the gross receipts tax for the year ending January 31, 1896, I beg respectfully to say that the bill is made out on the basis
31 of one per cent. upon the amount of the gross receipts in the State of Maryland, whereas under the act of 1880, chapter 16, this company is only required to pay one-half of one per cent., instead of one per cent.: the bill therefore should be made out upon the basis of one-half of one per cent. instead of the basis of one per cent.

For several years past, the N. C. R'y Company has been paying at the rate of one per cent. but in doing so, stated on the face of the return of gross receipts made to the comptroller, as follows:

"The Northern Central Railway Company in calculating the tax on its gross receipts at the rate of one per cent. such being the rate fixed by the act of assembly of Maryland, 1890, chapter 559, for the rate of State tax on the gross receipts of steam railroads, and in paying the amount arrived at by said calculation in no way waives, or is to be understood as waiving the right granted to it by the act of assembly of Maryland of 1880, chapter 16, to pay a State tax of one-half of one per cent. on its said gross receipts, and paying said tax to be relieved of all other taxes whatsoever, State, county or municipal, except as stated in said act of 1880, chapt. 16, but on the contrary insists and relies upon all the rights of exemption given to it by act of 1880, chap. 16, it makes payment in this year of taxes on its gross receipts of an additional one-half of one per cent. over and above what it is required by law to make as a voluntary contribution towards the revenue of the State, the said payments of said years not hereafter to be continued unless by the voluntary act of the said company."

The payment of this rate was made voluntary by the company, the rate imposed on other Cos. being one per cent. but as the rate upon the gross receipts has been so largely increased under the new law, the company has determined to pay only the sum which by the act of 1880, ch. 16, is required to pay, which is one-half of one per cent.

Yours truly,
(Signed) J. P. KERR, *Auditor.*

The defendant received in reply the following letter from the comptroller of the State of Maryland:

32 STATE OF MARYLAND:

Treasury department, comptroller's office.

ANNAPOLIS, *July* 31*st*, 1896.

J. P. Kerr, Esqr., auditor Northern Central Railway Co., Baltimore city, Md.

MY DEAR SIR: Your letter of June 26th, '96, enclosing draft in favor of the State of Maryland for $6,571.17, was duly received and contents carefully noted, and afterwards referred to Mr. H. M. Clabaugh, attorney general of the State, for his opinion, etc.

In reply I beg leave to say that I cannot receive your draft for above amount, nor any draft for a less amount than the full 1 % on gross receipts of your railway; and I herewith return the draft forwarded by you to this office for $6,571.17.

Unless payment of the 1 % on gross receipts is made by the Northern Central Railway Co. to the State of Maryland, suit for collection of same will be entered against said Co.

Most truly yours, ROBERT P. GRAHAM,
Comptroller,
Per T. H. WILLIAMS, *Chf Clk*

The defendant further proved by competent testimony, that from the passage of the act of 1880, chapter 16, the defendant complied with all the provisions of said act.

The defendant thereupon closed its testimony.

The plaintiff thereupon moved the court to strike out the act of 1880, chapter 16, for the following reasons:

The plaintiff moves to strike out chapter 16, Acts of 1880, offered in evidence in this case and admitted subject to exception for the following reasons:

First. Because said act is irrelevant to the issue involved in this case.

33 Second. Because said act has been repealed as to the rate of tax upon the gross receipts of the defendant by chapter 59, Acts of 1890.

Third. Because there is no legally sufficient evidence in this case of a good and sufficient consideration moving from the defendant for the exemption claimed under the terms of said act.

Fourth. And because said act is invalid in law as a binding contract against the plaintiff.

GEORGE R. GAITHER, JR.,
Att'y for Pl'ff

But the court overruled said motion and exception, to which overruling of said motion and exception the plaintiff excepted, and prayed the court to sig*h* and seal this its first bill of exceptions; which is accordingly done on this 9th day of July, 1899.

J. UPSHUR DENNIS. [SEAL.]

The testimony on both sides having been closed, the plaintiff offered the following prayers:

Plaintiff's First Prayer.

The plaintiff prays the court to rule as a matter of law in this cas- that there is no legally sufficient evidence of a good and sufficient consideration on the part of the defendant company for the contract set forth in the Acts of 1880, chapter 16, offered in evidence by the defendant.

Plaintiff's Second Prayer.

The plaintiff prays the court to rule as a matter of law in this case that the provisions of the Act of 1880, chapter 16, imposing a tax of one-half per cent. upon the gross receipts of the defendant company have been repealed by the act of 1890, chapter 559, and that the State of Maryland is entitled to recover from the defendant company a tax of one per centum, as ascertained by the terms of the said act of 1890, upon the gross receipts of said company for the year ending on the thirty-first day of January, 1896.

Plaintiff's Third Prayer.

The plaintiff prays the court as a matter of law in this
31 case that by the terms of the acts of 1880, chapter 16, offered in evidence, there is no provision conferring upon said defendant company in clear and unmistakable terms an exemption from taxation upon its gross receipts at a greater rate than one-half of one per cent. upon the same.

And the defendant offered the following prayers:

Defendant's Prayer No. 1.

The defendant prays the court to rule as a matter of law that if the court, sitting as a jury, shall find from the admission of the parties and the evidence in the case that the act of assembly of Maryland of 1880, chapter 16, was duly accepted by the stockholders of the defendant company as required by said act, and the certificate of acceptance duly filed as therein required; and that the defendant company, since the passage of said act, has done all the things required of it to be done by said act, including the payment of one-half of one per cent. in each year, since the passage of said act up to the year ending January 31st, 1895, inclusive, upon the gross receipts of the defendant mentioned in said act of 1880, chapter 16, and that it tendered payment in the manner set forth in the correspondence offered in evidence by the defendant, of one-half of one per cent. upon said gross receipts for the year ending January 31st, 1896, then the plaintiff, said tender having been refused, as shown in said correspondence, cannot recover in this action any other sum than the amount so tendered, even although the court determine, as

matter of law, that said act of 1880, chapter 16, was repealed by the act of 1890, chapter 559, because the said act of 1880, chapter 16, was a valid and binding contract between the State of Maryland and the Northern Central Railway Company, and so protected by the Constitution of the United States from impairment by any legislation of the State of Maryland.

Defendant's Prayer No. 2.

The defendant prays the court to rule as matter of law: That if the court, sitting as a jury, shall find from the admissions of the parties and the evidence in the case, that the act of assembly of Maryland of 1880, chapter 16, was duly accepted by the stockholders of the defendant company as required by said act, and the certificate of acceptance duly filed as therein required, and that the defendant company, since the passage of said act, has done all the things required of it to be done by said act, including the payment of one-half of one per cent. in each year, since the passage of said act up to the year ending January 31st, 1895, inclusive, upon the gross receipts of the defendant mentioned in said act of 1880, chapter 16, and that it tendered payment in the manner set forth in the correspondence offered in evidence by the defendant, of one-half of one per cent. upon said gross receipts for the year ending January 31st, 1896; then the plaintiff, said tender having been refused, as shown in said correspondence, cannot recover in this action any other sum than the amount so tendered, because, even though the court should hold as matter of law that the said act of 1880, chapter 16, was not a contract within the protection of the Constitution of the United States, yet the said act of 1880, chapter 16, was not repealed by the act of 1890, chapter 559.

Thereupon the court refused to grant any of the plaintiff's prayers, and granted the defendant's first prayer, and refused to grant the defendant's second prayer.

To which refusal of the court to grant its prayers, and to the action of the court in refusing to grant each of said prayers of the plaintiff, and to the action of the court in granting defendant's first prayer, the plaintiff excepted, and prayed the court to sign and seal this its second bill of exceptions; which is accordingly done on this 9th day of July, 1899.

J. UPSHUR DENNIS. [SEAL.]

July 6, '99.

The foregoing bill of exceptions is correct.

BERNARD CARTER,
Att'y for Def't.

Appellant's costs	$26 45
Appellee's costs	6 90

STATE OF MARYLAND, } *To wit:*
City of Baltimore, }

I, Robert Ogle, clerk of the superior court of Baltimore city, do hereby certify that the aforegoing is truly taken from the record and proceedings of the said court in the therein-entitled cause.

In testimony whereof, I hereunto set my hand and
(Seal's place.) affix the seal of the superior court of Baltimore city aforesaid, on the 30th day of August, eighteen hundred and ninety-nine.

ROBERT OGLE,
Clerk Superior Court of Baltimore City.

36 Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said State of Maryland above for error assigned, being seen, and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here, that there is error in the record of proceedings aforesaid, and also in the giving of the judgment aforesaid: Therefore it is considered by the court of appeals here, on this 10th day of January 1900 that the judgment aforesaid, given in form aforesaid be reversed with costs and cause remanded, and that the appellant recover its costs against the appellee as taxed, &c.

J. FRANK FORD,
Clerk Court of Appeals of Maryland.

37 And on the same day and year last aforesaid, to wit, January 10th 1900, the following opinion of the court of appeals of Maryland, was filed to wit:

38 Court of Appeals of Maryland.

THE STATE OF MARYLAND }
vs.
THE NORTHERN CENTRAL RAILWAY COMPANY. }

SCHMUCKER, judge delivered the opinion of the court:

This appeal presents the interesting and important question whether so much of the act of 1880 ch. 16 as granted to the appellee an exemption from taxation on the gross revenues from its property in Maryland, beyond the annual rate of one-half of one per cent. was subject to repeal by subsequent legislatures. If it is determined that the act was subject to repeal then the further question
39 arises wether it was in fact repealed by the act of 1890 ch. 559 which imposed a tax of one per cent. per annum on the gross receipts of all railroads in the State operated by steam.

A proper consideration of the issues thus presented involves the ascertainment of the status of the appellee in reference to liability for taxation prior to the passage of the act of 1880, the nature and operation of that act and the operation and effect of the act of 1890

as a repeal of so much of the act of 1880, as granted to the appellee a partial exemption from taxation.

It may assist us in arriving at a clear understanding of the case to review briefly the corporate history of the appellee.

40 The act of 1827, ch. 22, incorporated the Baltimore & Susquehanna Railroad Company to operate a railroad from Baltimore to the Susquehanna river and conferred upon it immunity from taxation.

By the act of 1854, ch. 250, the stockholders of Baltimore & Susquehanna Railroad Company were authorized to unite and consolidate with three Pennsylvania corporations, which were then operating connecting railroads, so as to form one corporation to be called "the Northern Central Railway Company" on such terms and conditions and in accordance with such regulations and agreements as the several companies might adopt. Similar authority for

41 the consolidation on the part of the Pennsylvania corporations having been procured from the legislature of that State, articles of union were executed by all of the corporations by which among other things they transferred to the new company the property, rights, privileges and immunities which had theretofore belonged to the several old companies. It is not necessary to state in fuller detail the various terms of this consolidation or the transaction by means of which it was accomplished for the legal operation and effect of it upon the liability to taxation of the new corporation, which is the present appellee, has been carefully considered and passed upon by this court in the case of The State *vs.* The Northern Central Railway Co. 44 Md. 131 which will be referred to more at large hereafter.

42 The appellee enjoyed the exemption of its property in Maryland from taxation thus secured to it by the act of 1854 down until 1866 when the legislature passed a general assessment law which provided for the assessment of all property in the State, and also repealed in general terms all laws exempting property from taxation. The act of 1870 ch. 362, also contained a clause repealing "every provision contained in the charter, or supplements thereto, of every railroad company incorporated by the laws of this State or contained in any law heretofore passed by the legislature of this State whereby the stock or property real or personal of any railroad company * * * is exempted from taxation." Then fol-

43 lowed the act of 1872 ch. 234 which imposed a tax of one-half per centum annually upon the gross receipts of steam railroads.

Under the last-mentioned law a tax was levied on the appellee of one-half per cent. of the gross receipts of its *of its* Maryland property for part of the year 1872 and all of the year 1873. This tax the appellee refused to pay and the State brought suit to recover it and the judgment being against the State it brought the case here on appeal and it is reported in 44 Md., 131. This court held the appellee to be liable for the tax and reversed the judgment of the lower court. In deciding that case it became

necessary for this court to examine carefully into the corpo-
41 rate history and legal status of the appellee and to consider and pass upon all of the legislation to which we have referred which had been enacted, as well as the transactions of the four former corporations incident to their consolidation into the Northern Central Railway Company.

The court in its opinion in that case announced a number of conclusions which have a material bearing upon the case at bar. They are as follows:

First. That the appellee was created and derived its existence from the act of 1854 ch. 250, and was in no sense created by the articles of union executed by the several consolidating corporations from the union of which it sprung.

45 Secondly. That the rights and privileges including exemptions from taxation granted to the Baltimore and Susquehanna Railroad Co. by the act of 1827 were, in the consolidation of the four companies, conferred on the appellee not by transfer from the Baltimore and Susquehanna Railroad Company but as new and special grants under the act of 1854 which created the appellee as the new corporation.

Thirdly. The constitution of 1850 having been in operation when the act of 1854 was passed and the exemption from taxation having been part of the charter granted, by that act, to the appellee, the power of the legislature to repeal or revoke the exemption
46 thus granted whenever in its judgment the public interest required it was too clear to be questioned.

Fourthly. The general assessment law of 1866 and the act of 1870, ch. 362, contains a plain and unambiguous expression by the legislature of its intention to repeal this exemption and those acts in fact accomplished its repeal.

Fifthly. The act of 1872, ch. 234, imposing an annual tax of one-half per cent. upon the gross receipts of steam railways was a valid exercise of the taxing power of the State and the appellee was liable thereunder to the tax at that rate on the gross receipts from its property in Maryland.

After the case had been remanded by the decision in 44th
47 Md., and before it had been retried in the lower court, the act of 1880 ch. 16 was passed. This act is described in its preamble as one to adjust and finally settle by agreement the pending tax controversies between the State and the company by making the latter thereafter liable to taxation to a certain extent and providing for the payment of certain indebtedness claimed by the State from the company and it is declared to be "An act supplementary to the act of eighteen hundred and fifty-four chapter two hundred and fifty" which was held by this court in 44th Maryland to constitute the charter of the appellee. No further change in the situation occurred until the State by the act of 1890 ch. 559 raised the annual rate of tax upon the gross receipts of steam rail-
48 road companies to one per cent. The appellee paid the increased rate of tax, upon the gross receipts of its property in Maryland under protest until 1896 when it refused to do so any

longer and the present suit was brought to recover the tax for the year 1896. The case was tried before the court below without a jury and the judge by his ruling on the prayers held that the act of 1880 constituted a contract irrepealable without the consent of the appellee, by which it was exempted from paying more than one-half per cent. tax upon its gross revenues and he rendered a verdict and entered up judgment accordingly from which the State appealed.

This brings us to the consideration of the most important
49 question presented by this appeal, that is, whether the passage by the legislature of the act of 1880 and its acceptance by the appellee constituted a contract between it and the State which it was beyond the power of the legislature to repeal or impair.

The act of 1880 is declared upon its face to be supplemental to that of 1854 and it grants to the appellee the partial exemption from taxation in almost the identical words in which the former act granted the complete exemption. The practical effect of the latter act upon the prior one which the charter of the appellee was to so amend it as to substitute the partial for the complete exemption.

The same constitutional provision t-uching the formation of
50 corporations which provided that all laws passed in pursuance thereof should be subject to alteration or repeal was in force when each of the two laws was passed. If by reason of this provision of the constitution it was not competent for the legislature to grant to the appellee an irrepealable exemption from taxation by the act of 1854 which constituted its charter, it cannot be successfully contended that the legislature could make a valid grant of such an exemption by an act, passed in 1880, which was supplemental to or amendatory of the former act, unless the feature which we shall hereafter notice in the act of 1880 so distinguishes it from the laws contemplated by the section of the constitution to which we have referred, as to take it out of
51 the operation of that section. This court in the opinion in the case in 44th Md. in commenting upon the effect of the constitution of 1850 upon the act of 1854, say: "In accepting the act of 1854 and in the execution of the articles of union under the operation of which the Baltimore and Susquehanna railroad has merged and ceased to exist, the stockholders are presumed to have known that the corporate powers and privileges granted by that act to the Northern Central Railway Company were subject to the provisions of sec. 47 art. 3, of the constitution and that the exemption from taxation claimed under that act was liable to be repealed by the legislature whenever in its judgment the public interest
52 required it. Be that however as it may it was not within the power of the legislature under the constitution of the State to grant to the appellee immunity from taxation or any other corporate privilege beyond the power of a subsequent legislature to repeal or revoke." It is to be observed that the court does not rest the inability of the legislature to grant to a corporation an irrepe-able exemption from taxation, upon the form or character of the particular statute then under consideration but puts it upon the

broad ground of want of power in the legislature under the constitution, to make such a grant at all. The court certainly in effect determines that any form of law which grants to a corporation such a corporate privilege as immunity from taxation is one passed pursuant to the section of the constitution referred to and is therefore subject to alteration or repeal by future legislatures.

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If this construction of the constitution be correct, how can we escape the conclusion the legislature of 1880 had no greater power, by the passage of the act upon which the appellee bases its claim to a partial exemption from taxation, to grant that exemption in a irrepealable form, that the legislature of 1854 had to grant a total exemption in like form by the act which it passed and which this court has held to be subject to repeal at any time? The appellee attempts to answer this query by calling attention to the fact that the act of 1880 differs from that of 1854 in the essential particular that it, upon its face and especially in its preamble, professes to have been passed for the purpose of adjusting and settling by agreement the controversies which were then pending between the State and the appellee in reference to the extent and validity of the claims of the latter to exemption from taxation, and that the contents of the act itself show that the appellee in accepting it and complying with its terms gave up a valuable right of appeal to the United States Supreme Court, and paid a large sum of money to the State thus supplying a valid consideration which made the action of the State binding and permanent. Without going into the contents of the act in detal or fully reciting the things done upon the faith of it by the appellee it may be conceded that, if there were no constitutional difficulty in the way, the transaction between the State and the appellee as part of which the act of 1880 was passed was one so far in the nature of a contract or agreement that neither party could abrogate it without the consent of the other.

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The difficulty with the appellee's contention is that the inability of the legislature under the constitution to make in 1880 a valid and irrepealable grant of such a corporate privilege as immunity from taxation did not rest upon the want of a sufficient consideration for the grant but upon the fundamental want of power in the legislature to make it by reason of the provisions of the constitution which is the supreme and controlling law of the land. It is plain therefore that the question of consideration *vel non* cannot be a controlling one in determining the question now at issue. If as this court has decided in 44 Md. the appellee in executing the articles of union under the act of 1854 must be presumed to have known that the privileges granted by that act were subject to the provisions of the constitution and repealable at any time, so must the appellee in accepting the provisions of the act of 1880 be presumed to have known that the immunity from taxation granted by that act was in like manner and for the same reasons subject to repeal by future legislatures.

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57 If the act of 1880 had been passed prior to the adoption of the constitution of 1850, we would under the decisions of this court in Tax Cases, 12 G. & J. 117; The State *vs.* The B. & O. R. R. Co., 48 Md. 71; The State *vs.* The Northern Central R. R. Co. 44 Md., at pg. 162 and The County Commissioners *vs.* A. & E. R. R. Co., 47 Md. 611, and of the United States Supreme Court in Miller *vs.* The State, 15 Wal. 448, and other cases, have been compelled to uphold its validity beyond the power of subsequent legislatures to repeal or impair even though its operation would be to tie the hands of all future legislatures and practically alienate the sovereign right of taxation, but in view of the language already referred to
58 used by the court in 44 Md., the privilege of partial immunity from taxation conferred on the appellee by the act of 1880 must be held to have been subject to repeal by subsequent legislatures.

The question remaining for consideration is whether the act of 1890, ch. 559, repealed the exemption from taxation claimed by the appellee under the act of 1880. We think that the exemption was so repealed both because the language of the repealing clause contained in the later act was broad enough to cover it and because of the plain inconsistency of the provisions of the two acts. The act of 1890 declares that the tax thereby provided for shall be levied annually upon the gross receipts of "all railroad companies
59 whose roads are worked by steam incorporated by or under the authority of this State, &c., * * * and doing business in this State." And it requires "each and every railroad company" to annually make report under oath of its gross revenues and transmit the amount of the tax to the comptroller, and provides that "if any officer of any such corporation or company" shall make a false statement in such report he shall be guilty of perjury. The repealing clause of the act repeals "all acts or parts of acts in conflict herewith." The language thus used by the legislature plainly indicates a purpose to apply a uniform rate and method to the taxation of all steam railroads within the State and to repeal, so far as it could, all prior laws which interfered with the consummation of that purpose.

60 Apart from the express repeal of all inconsistent laws by the act of 1890 the scheme and purpose of that act, as gathered from the comprehensive expressions used in describing the subjects of its operation are entirely inconsistent with those of the provisions of the act of 1880 which, if they remained in force would exclude the appellee from the operation of the later act.

The subject of the implied repeal of an existing law by the enactment of a later one whose provisions are inconsistent with it has frequently been the subject of consideration by this court, and the substance of its conclusions has been well stated by the former
61 Chief Judge Alvey in The W. M. R. R. Co. *vs.* The Appeal Tax Court, 50 Md. 296 as follows: "The general doctrine on the subject of implied repeals is that when there are two acts on the same subject both are to be given effect if possible. If however the two acts are plainly repugnant to each other in any of their pro-

visions the later act without any repealing clause will operate to the extent of the repugnancy as a repeal of the first; and even where the two acts are not in express terms repugnant yet if the later act covers the whole subject of the first and embraces new provisions showing that it was intended as a substitute for the first act it will operate as a repeal of that act."

62 Tested by the principles thus laid down the act of 1890 which by its express terms imposes a tax of one per cent. upon the gross receipts of all railroads worked by steam within the State must be held to be so inconsistent with that part of the act of 1880 which provides that the appellee shall not pay a greater tax upon its gross receipts than one-half of one per cent., as to effect a repeal thereof.

If we were in doubt as to the legal operation of the act of 1890 upon that of 1880 and thought it equally susceptible of either of the two constructions contended for, it would be our duty to adopt the construction which would tend (to effectuate rather than the one which would tend) to defeat the intention of the constitution that

63 taxation should be fair and equal in proportion to the value of the property assessed. Such a construction of the provisions of the later of the two acts now under consideration would require us to hold that they repeal the exemption from taxation granted to the appellee by the former one.

It follows from what we have said that the judgment appealed from must be reversed and the case remanded.

Filed January 10th 1900.

Opinion, &c., remanded to the superior court of Baltimore city, on the 30th day of January, A. D. 1900.

64 *Record.*

In the Court of Appeals of Maryland.

THE NORTHERN CENTRAL RAILWAY COMPANY
vs.
THE STATE OF MARYLAND. } No. —.

Appeal from the superior court of Baltimore city.

Bernard Carter, for appellant.
Att'y Gen'l Rayner, George R. Gaither, Jr., for appellee.

Filed September 26th, 1900.

65 Appeal from the superior court of Baltimore city.

First appeal in this case was to October term, 1899, and transcript made and sent by mail Sept. 14th, 1899.

Docket Entries.

January 13th, 1900.—Opinion of court of appeals (Judge Schmucker) reversing the judgment appealed from and remanding case and certificate of clerk, f'd.

June 18, 1900.—Motion by plaintiff to amend declaration by making the amount claimed $20,000.00, instead of $16,000.00 and leave granted and amendment made.

June 18, 1900.—Case tried before Hon. Henry Stockbridge, judge at large without the intervention of a jury.

June 18, 1900.—Verdict for plaintiff for $17,124.17, judgment on verdict.

Defendant's Bill of Exceptions.

Filed June 18th, 1900.

At the trial of the above-entitled case the plaintiff offered in evidence the certificate of the comptroller of the State of Maryland, setting forth the indebtedness of the defendant, as follows:

(NOTE.—The certificate of the comptroller herein called for is annexed to the account filed with the declaration, hereinbefore inserted.)

The plaintiff then offered in evidence the act of assembly of Maryland of 1890, chapter 559.

And read therefrom the following portions of said act, which it was agreed between counsel for the respective parties were all the provisions of said act pertinent to the questions involved in this case:—

An act to provide for State taxation on the revenues of railroad, telegraph or cable, express or transportation, telephone, parlor car, sleeping car, safe deposit, trust, guarantee, fidelity oil or pipe line, title insurance, electric light or electric construction companies incorporated under any general or special law of this State and doing business therein.

SECTION 1. Be it enacted by the General Assembly of Maryland, That a State tax of one per centum be and is hereby levied annually upon the gross receipts of all railroad companies worked by steam incorporated by or under the authority of this State and doing business therein; a State tax of one per centum is hereby levied annually upon the gross receipts of every telegraph or cable
66 express or transportation company incorporated under any general or special law of this State and doing business therein; a State tax of two per centum is hereby levied annually upon the gross receipts of all telephone, parlor car, sleeping car, safe deposit, trust, guaranty and fidelity companies incorporated under any general or special law of this State and doing business therein; a State tax of one per centum is hereby levied annually upon the gross receipts of all oil or pipe line companies and all title insurance companies incorporated under any general or special law of this State and doing business therein, and one-half of one per centum upon the annual gross receipts of all electric light or electric construction companies incorporated under any general or special law of this State and doing business therein; if any such

railroad company has part of its road in this State and a part thereof in another State or States, such company shall return a statement of its gross receipts over its whole line of road together with a statement of the whole length of its line in this State, and such company shall pay to the State at the said rates hereinbefore prescribed upon such proportion of its gross earnings as the length of its line in this State bears to the whole length of its line, and similar statements shall be made by each oil or pipe line company and each sleeping car, parlor car, express, transportation or cable company, so that the proportion of said gross earnings of said companies respectively accruing from their business within this State may be accurately ascertained or said ascertainment may be made in any other mode satisfactory to the State tax commissioner; the said gross-receipt taxes shall be due and payable at the treasury on or before the first day of July in each year.

SEC. 2. And be it enacted, That it shall be the duty of each and every such corporation or company so doing business in said State on or before the fifteenth day of April next, and on or before the fifteenth day of April in each and every year thereafter to make a report under oath of its president, treasurer or other proper officer, to the State tax commissioner showing its total receipts or revenues accruing from business done in this State for the year ending on the preceding thirty-first day of January, and it shall be the duty of the State tax commissioner to file such report in his office, and on or before the first day of June next, and on or before the first day of June in each and every year thereafter, to calculate the State tax due from such corporation or company on its gross receipts or revenues aforesaid for such year, and to transmit the amount of such State tax to the comptroller of the treasury, to be collected and received into the State treasury as other State taxes are received into the treasury of this State.

* * * * * * *

SEC. 6. And be it enacted, That if any such corporation or company from whom such taxes shall be due and payable on its gross receipts and revenues as aforesaid, shall fail or neglect to pay the same to the treasurer of the State for the space of one month after the same shall be due and payable as aforesaid, such corporation or company shall for such failure or neglect forfeit and pay to the State of Maryland an additional amount of five per cen-
67 tum as penalty or damages, to be added to the said taxes so due and unpaid, and it shall be the duty of the comptroller to add the same to the said account, and forthwith to make out said account and certify the same under the seal of his office, and to cause suit to be brought for said taxes in the circuit court for the county where the principal office of such corporation or company is located, or in the superior court of the city of Baltimore the court of common pleas or the Baltimore city court, if such principal office be located in the said city, and the said suit shall stand for trial at the first term after the service of the writ shall have been made on such corporation or company, and service of the writ aforesaid on any officer,

agent or employee of said corporation or company, shall be deemed and taken as sufficient service of such company.

SEC. 7. And be it enacted, That if upon the return of the writ issued against such corporation or company, and the said corporation or company being duly summoned as aforesaid, such corporation or company shall fail to appear by attorney or agent upon the first call of the docket, it shall be the duty of court to cause the personal appearance of said corporation or company to be entered, and the cause shall stand for trial or hearing and shall proceed and judgment shall be rendered as if such corporation or company had appeared by attorney, and if such corporation or company shall appear by attorney or agent, and either party shall desire or require a trial by jury, it shall be the duty of the court to cause issues to be framed, and a jury to be empaneled for the trial thereof, and if the verdict of the jury shall be for the State, judgment shall be entered with stay for the amount of taxes so due as aforesaid, and the five per cent. additional as damages with interest and costs, and a fee of fifty dollars shall be allowed the attorney for the State to be taxed in the plaintiff's costs in said suit, and execution shall be issued on such judgment if the same be not paid into the treasury within thirty days after the rendition thereof.

SEC. 8. And be it enacted, That the certificate of the comptroller under the seal of his office, of the amount of taxes so due as aforesaid, and of the said penalty or damages shall be *prima facie* evidence to entitle the State to judgment for said amount of State taxes, and said penalty or damages in any case in which suit may be brought for the recovery of such State taxes as aforesaid.

SEC. 9. And be it enacted, That this act shall take effect from and after the date of its passage, and all acts or parts of acts in conflict herewith be, and the same are hereby repealed.

Approved April 8th, 1890.

The plaintiff having closed its testimony, the defendant, to support the issues on its part, offered in evidence, the Acts of Assembly of Maryland of 1854, chap. 250, and read the same, which said act is as follows:

CHAPTER 250.

An act to authorize the consolidation of the Baltimore and Susquehanna Railroad Company with the York and Maryland Line Railroad Company, the York and Cumberland Railroad Company, and the Susquehanna Railroad Company, by the name of the Northern Central Railway Company.

68 SECTION 1. Be it enacted by the General Assembly of Maryland, That the stockholders of the Baltimore and Susquehanna Railroad Company be, and they are hereby authorized upon their expressing their assent to and accepting this act, to unite and to consolidate their company or corporation with the York and Maryland Line Railroad Company, the York and Cumberland Railroad Company and the Susquehanna Railroad Company in the State of Penn-

sylvania, so as to form and constitute one company or corporation, to be called the Northern Central Railway Company, on such terms and conditions, and conformably to such agreements and regulations as the said several companies shall respectively determine and adopt, subject nevertheless to the following general provisions: First, that all existing contracts, engagements and liabilities of the said Baltimore and Susquehanna Railroad Company shall continue to bind said company and its property as fully as before the consolidation herein above authorised, or that the said existing, contracts, engagements and liabilities shall be duly adopted and assumed by the consolidated company except as herein expressly altered or rescinded; second, that all laws heretofore made in reference to the said Baltimore and Susquehanna Railroad Company, and not repealed or modified by the legislature of Maryland, and all ordinances relating to said company heretofore made and not repealed by the mayor and city council of Baltimore, shall be binding and operative upon the said consolidated company, so far as its property or its operations may be, within the jurisdiction of the State of Maryland or the city of Baltimore respectively, and so far as the said laws or ordinances may be applicable to, and consistent with the new organization of the said consolidated company; third, that the consolidated company shall have power from time to time to establish its capital stock at an amount not exceeding eight millions of dollars, the same to be represented by such number of shares as the said consolidated company shall have power to issue their bonds convertible into stock on such terms as the company may prescribe, and to secure the same by one or more mortgages, for any such amounts as they may find necessary for paying off any existing debt or engagement of the company, completing the road to Sunbury, stocking the road, laying a double track on the same or any part thereof, and for extending their road to tide water, and constructing such docks and other fixtures as they may find necessary. Fourth. That the said consolidated company shall annually elect at such time and place as shall be appointed and required by the by-laws of the company, twelve directors, who together with such additional directors as may be appointed in conformity with this act, by the State of Maryland and the city of Baltimore, so far as such legislature shall not impair the due representation of the State of Maryland, and the city of Baltimore, or either of them in the same, and their appointment of said directors, as is hereinafter provided. Fifth. That in the direction of the said consolidated company, the city of Baltimore shall be entitled to appoint two directors in the board of said consolidated company whenever, and as long as said city shall hold not less than two hundred thousand dollars of the stock therein valued at its par value; and one director so long as the said city shall hold one hundred thousand dollars of the said
69 stock va*l*ued as aforesaid, and less than two hundred thousand dollars in the same; and that the State of Maryland shall in like manner, whenever, and as long as it may hold stock in the said consolidated company be entitled to appoint the same number of directors in said company under the like conditions and re-

strictions, the said director or directors of the State of Maryland or city of Baltimore respectively, whenever appointed, to be in addition to the directors hereinbefore mentioned and allowed in the constitution of the board. Provided, that this clause shall not be understood to deprive either the State of Maryland, or the city of Baltimore, of the right to vote as other stockholders of said company upon any stock, either the State or city may at any time hereafter hold in said company, above the amount of two hundred thousand dollars, estimated at its par value in the capital stock of the same (if the State or city at any time appoint such directors,) shall constitute the board for the management of the affairs of the company; which board shall annually elect a president to preside over the company, and a majority of said board shall constitute a quorum: and the president and directors shall have power to appoint all necessary officers, to regulate their salaries, and to make such by-laws as they deem necessary for the government of the company; that the company shall make and use a common seal, and possess all the corporate powers and privileges, and be subject to all the duties and obligations not inconsistent with this act, and its general intent, which are expressed in the charter heretofore granted to the said Baltimore and Susquehanna Railroad Company, and its supplements; provided, that this clause shall not be construed to deprive the parties to the said consolidated company of the right or authority to make such provisions and regulations, notwithstanding said original charter and its supplements, as may be necessary to create and establish said consolidated company, and bring its organization into agreement and consistency with the terms and conditions of the charter of the several companies of which the said consolidated company shall be composed; and provided also, that the parties to the consolidated company shall be authorized and empowered to adopt and conform the organization of the said consolidated company to such provisions or enactments as may be required by the legislature of the State of Pennsylvania, touching the name of said corporation, and the construction of the board of president and directors in said consolidated company, and the conditions relating to their appointments.

SEC. 2. And be it enacted, That this act shall take effect whenever, and as soon as the said parties hereinbefore referred to shall have agreed to consolidate their several companies into one, and shall have settled, determined and agreed upon the terms and conditions of such consolidation in conformity with the provisions of this act, and shall make a full record and report thereof, certified by the president of said consolidated company, and have transmitted the same to the governor of Maryland, to be recorded and preserved in the office of the secretary of state; a copy of which record duly authenticated, under the seal of the secretary of state, shall be evidence thereof in all courts of justice.

70 The defendant then offered in evidence, the act — assembly of Maryland of 1880, chapter 16, and read the same, which said act is as follows:

An act to adjust and settle finally, by agreement, all pending controversies between the State of Maryland and the Northern Central Railway Company, by subjecting the franchises and property of said company within the State to taxation for State purposes to a certain extent, and by providing for the payment of a certain indebtedness claimed by the State of Maryland to exist on the part of said Northern Central Railway Company to said State of Maryland, being an act supplementary to the act of eighteen hundred and fifty-four, entitled An act to authorize the consolidation of the Baltimore and Susquehanna Railroad Company with the York and Maryland Line Railroad Company, the York and Cumberland Rail—— Company, and the Susquehanna Railroad Company, by the name of the Northern Central Railway Company.

Whereas, a controversy has arisen and exists between the State of Maryland and the Northern Central Railway Company in reference to the rights of the State of Maryland to subject to taxation the franchises and property of the Northern Central Railway Company, the said company claiming exemption of the same from taxation upon the grounds that among the terms and conditions of the union and consolidation of the several companies by which said Northern Central Railway Company was formed is one, that the latter should have all the rights, privileges and immunities of each of said companies, which said terms were entered into under the authority given by the act of Maryland of eighteen hundred and fifty-four, chapter two hundred and fifty, which moreover declared that said Northern Central Railway Company should have all the powers and privileges expressed in the charter granted by the State of Maryland to the Baltimore and Susquehanna Railroad Company among which privileges was immunity from taxation.

And whereas, the State of Maryland having, by the act of eighteen hundred and seventy-two, chapter two hundred and thirty-four, and the act of eighteen hundred and seventy-four, chapter four hundred and eight imposed an annual tax of one-half of one per centum on the gross receipts of all railroad companies worked by steam incorporated by or under the authority of the said State of Maryland, and claiming that under said acts the gross receipts of said Northern Central Railway Company are liable to said tax, have instituted suits to recover the same.

And whereas, the property of said company has been also assessed as liable to taxation for county and municipal purposes.

And whereas, the said company has the right to have the question at issue between it and the State of Maryland carried to the Supreme Court of the United States to be there decided.

And whereas it has been represented to this General Assembly that what would be the ultimate decision of said question is a matter of great doubt, and it is deemed to be moreover just and proper that an equitable settlement should be made of the matters so in
71 controversy and it having been represented to this General Assembly that the said Northern Central Railway Company, for the purpose of making such settlement, is willing to pay a tax

of one-half of one per centum on the gross receipts within this State, upon the terms and conditions hereinafter set forth; now therefore—

SECTION 1. Be it enacted by the General Assembly of Maryland, That the Northern Central Railway Company shall have and possess all the powers, rights, privileges and immunities, and be subject to all the duties and obligations which are expressed in the act of assembly of Maryland of eighteen hundred and twenty-seven, chapter seventy-two, entitled An act to incorporate the Baltimore and Susquehanna Railroad Company, but all the franchises and property of every description and gross receipts of said Northern Central Railway Company, within the State of Maryland, shall be subject to taxation for State purposes to the extent of an annual tax of one-half of one per centum upon the gross receipts from its railroad and branches lying within the State of Maryland, and from all other sources within this State, and said franchises, property and gross receipts shall not be subject to any other tax under the laws of the State of Maryland; provided, however, that all such property, works and structures of the said Northern Central Railway Company, which are or may be taxable within the meaning of the decision of the court of appeals of Maryland rendered in the year eighteen hundred and seventy-eight in the case of the State of Maryland against the Baltimore and Ohio Railroad Company, shall be subject to taxation for county and municipal purposes in the same way and to the same extent as the property of individuals.

SEC. 2. And be it further enacted, That this act shall not take effect until the said The Northern Central Railway Company shall have paid to the treasurer of the State of Maryland the sum of twenty-nine thousand seven hundred and sixty-two dollars and fifty-six cents, as mentioned in the third section of this act, nor until this act and all its provisions shall have been accepted in the mode prescribed in the fourth section hereof.

SEC. 3. And be it further enacted, That the payment of the sum of twenty-nine thousand seven hundred and sixty-two dollars and fifty-six cents mentioned in the second section of this act shall be made by said Northern Central Railway Company to the treasurer of the State of Maryland, on or before the first day of July, eighteen hundred and eighty, and the said treasurer shall receive said sum from said company; and the said sum of twenty-nine thousand, seven hundred and sixty-two dollars and fifty-six cents, when so paid, is hereby declared to be in full satisfaction and discharge of all claims arising under the laws of the State of Maryland for taxes against said company up to December thirty-first, eighteen hundred and seventy-nine, saving and excepting taxes for municipal and county purposes upon the property mentioned in the proviso to the first section of this act.

SEC. 4. And be it further enacted, That the acceptance of this act mentioned in the second section thereof shall be made by the stockholders of said Northern Central Railway Company at a general meeting of the same, the acceptance to be evidenced by an instrument of writing under the corporate seal of said

72

company, which shall be filed in the office of the secretary of state of Maryland.

SEC. 5. And be it further enacted, That upon the compliance of said Northern Central Railway Company with the provisions of the third and fourth sections of this act, all claims against said Northern Central Railway Company for taxes assessed under any law of the State of Maryland and unpaid by it up to December thirty-first, eighteen hundred and seventy-nine, except municipal and county taxes upon the property mentioned in the proviso to the first section of this act, are hereby declared to be discharged, and all suits or other proceedings heretofore instituted for the enforcement of the payment by said Northern Central Railway Company of taxes shall be dismissed and abandoned on the payment of costs by said company.

SEC. 6. And be it further enacted, That this act shall take effect from the date of its passage, subject nevertheless to all the conditions and limitations in reference to the provisions of said act which are therein set forth.

Approved February 25, 1880.

The defendant then read the following agreement of counsel:

It is agreed in this case, subject to any objection which may be made by the plaintiff as to its relevancy, as follows:

1. That the sum of $29,762.50, mentioned in the act of assembly of Maryland of 1880, chapter 16, was paid to the treasurer of the State of Maryland before the first day of July, 1880, in accordance with the requirements of the said act of assembly.

2. That the said act of assembly was duly accepted by the stockholders of the Northern Central Railway Company at a general meeting of the said stockholders; and that the said acceptance was evidenced by an instrument of writing under the corporate seal of the said company, which was filed in the office of the secretary of state, before the 1st day of July, 1880. And that the said company from and after the passage of said act paid in each year ½ of one per cent. on its gross receipts described in said act, up to and including the year ending December 31, 1889, under the terms of the act of 1874, chap. 408.

GEORGE R. GAITHER, JR.,
Att'y for Pl'ff.

BERNARD CARTER,
Att'y for Def't.

The defendant then offered in evidence a certificate of the docket entries of cases Nos. 59 and 60 in the October term, 1875, of the court of appeals of Maryland, brought by the State of Maryland against the Northern Central Railroad Company, in which cases the judgments of the superior court of Baltimore city in favor of the said company were reversed by the court of appeals, and a new trial ordered by the court on the 2d day of March, 1876; being the case reported in 44 Md. p. 131, also the docket entries in said case in

the superior court for Baltimore city, after its remand by the
73 court of appeals showing that no new trial had taken place in said cases, and that said cases were pending in January, 1880.

The defendant also proved by competent testimony that from the time of the passage of the act of 1880, chapter 16, up to and including the year 1890, the defendant paid in each year one-half of one per cent., on its gross receipts from its railroads and branches lying within the State of Maryland, and from all other sources within said State.

The defendant further proved that after the passage of the act of assembly of Maryland of 1890, chapter 559, the defendant in the years 1891, 1892, 1893, 1894 and 1895 paid to the State of Maryland for each of said years a tax of one per cent. on its gross receipts above mentioned, but in making each of said payments, accompanied the same with a declaration that in making said payments it in no way waived the right granted to it by the act of assembly of Maryland of 1880, chapter 16, to pay a State tax of one-half of one per cent. on its gross receipts and paying said tax, to be relieved of all other taxes whatsoever, State, county or municipal, except as stated in said act of 1880, chapter 16. The form of said declaration as made at the time of the payment of said tax for the year 1895, was as follows: (The same form *mutatis mutandis* having been used in the previous years.)

"The Northern Central Railway Company, in calculating the tax on its gross receipts at the rate of one per cent., such being the rate fixed by the act of assembly of Maryland, 1890, chapter 559, for the rate of State tax on the gross receipts of steam railroads, and in paying the amount arrived at by said calculation, in no way waives, or is to be understood as waiving, the right granted to it by the act of assembly of Maryland of 1880, chapter 16, to pay a State tax of one-half of one per cent. on its said gross receipts, and paying said tax, to be relieved of all other taxes whatsoever, State, county or municipal, except as stated in said act of 1880, chapter 16, but on the contrary, insists and relies upon all the rights of exemption given to it by said act of 1880, chapter 16; it makes payment in this year 1895, as it did in the years 1891, 1892, 1893 and 1894, of tax on its gross receipts of an additional one-half of one per cent. over and above what it is required by law to make, as a voluntary contribution towards the revenue of the State, the said payments for said years, not hereafter to be continued, unless by the voluntary act of the said company."

The defendant further proved by competent testimony that on the 26th day of June, 1896, the defendant tendered to the treasury department of the State of Maryland the sum of six thousand, five hundred and seventy-one dollars and seventeen cents, which was one-half of one per cent. on the gross receipts of the defendant from its railroads and branches lying within the State of Maryland, and from all other sources within the State, as the amount payable by it on its gross receipts for the year ending January 31st, 1896, and ac-

companied the said tender with a letter to the treasurer of the State of Maryland, dated June 26th, 1896, which letter is as follows:

74 Northern Central Railway Company, office of the auditor.

BALTIMORE, *June* 26, 1896.

Thomas J. Shryock, Esq., treasurer State of Maryland.

DEAR SIR: Referring to bill sent by the department to the Northern Central Railway Company for the amount payable by it for the gross-receipts tax for the year ending January 31, 1896, I beg respectfully to say that the bill is made out on the basis of one per cent. upon the amount of the gross receipts in the State of Maryland, whereas under the act of 1880, chapter 16, this company is only required to pay one-half of one per cent. instead of one per cent.; the bill therefore should be made out upon the basis of one-half of one per cent. instead of the basis of one per cent.

For several years past, the N. C. R'y Company has been paying at the rate of one per cent. but in doing so, stated on the face of the return of gross receipts made to the comptroller, as follows:

"The Northern Central Railway Company in calculating the tax on its gross receipts at the rate of one per cent. such being the rate fixed by the act of assembly of Maryland, 1890, chapter 559, for the rate of State tax on the gross receipts of steam railroads, and in paying the amount arrived at by said calculation in no way waives, or is to be understood as waiving the right granted to it by the act of assembly of Maryland of 1880, chapter 16, to pay a State tax of one-half of one per cent. on its said gross receipts, and paying said tax to be relieved of all other taxes whatsoever, State, county or municipal, except as stated in said act of 1880, chapt. 16, but on the contrary insists and relies upon all the rights of exemption given to it by act of 1880, chap. 16, it makes payment in this year of taxes on its gross receipts of an additional one-half of one per cent. over and above what it is required by law to make as a voluntary contribution towards the revenue of the State, the said payments of said years not hereafter to be continued unless by the voluntary act of the said company."

The payment of this rate was made voluntary by the company, the rate imposed on other Cos. being one per cent. but as the rate upon gross receipts has been so largely increased under the new law, the company has determined to pay only the sum which by the act of 1880, ch. 16, — is required to pay, which is the one-half of one per cent.

Yours truly,

(Signed) J. P. KERR, *Auditor.*

The defendant received in reply the following letter from the comptroller of the State of Maryland:

STATE OF MARYLAND:

Treasury department, comptroller's office.

ANNAPOLIS, *July* 31*st*, 1896.

J. P. Kerr, Esq., auditor Northern Central Railway Co., Baltimore city, Md.

MY DEAR SIR: Your letter of June 26th, '96, enclosing
75 draft in favor of the State of Maryland for $6,571.17, was duly received and contents carefully noted, and afterwards referred to H. M. Clabaugh, attorney general of the State for his opinion, etc.

In reply I beg leave to say that I cannot receive your draft for above amount, nor any draft for a less amount than the full 1% on gross receipts of your railway; and I herewith return the draft forwarded by you to this office for $6,571.17.

Unless payment of the 1% on gross receipts is made by the Northern Central Railway Co. to the State of Maryland, suit for collection of the same will be entered against said Co.

Most truly yours,

ROBERT P. GRAHAM, *Comptroller.*

The defendant further proved by competent testimony, that from the passage of the act of 1880, chapter 16, the defendant complied with all the provisions of said act.

The defendant thereupon closed its testimony.

The testimony on both sides having been closed, the defendant offered the following prayers:

Defendant's Prayer No. 1.

The defendant prays the court to rule as a matter of law that if the court, sitting as a jury, shall find from the admission of the parties and the evidence in the case that the act of assembly of Maryland of 1880, chapter 16, was duly accepted by the stockholders of the defendant company as required by said act, and the certificate of acceptance duly filed as therein required; and that the defendant company, since the passage of said act, has done all the things required of it to be done by said act, including the payment of one-half of one per cent., in each year, since the passage of said act up to the year ending January 31st, 1895, inclusive, upon the gross receipts of the defendants mentioned in said act of 1880, chapter 16, and that it tendered payment in the manner set forth in the correspondence offered in evidence by the defendant, of one-half of one per cent. upon said gross receipts for the year ending January 31st, 1896, then the plaintiff, said tender having been refused, as shown in said correspondence, cannot recover in this action any other sum than the amount so tendered, even although the court determine, as a matter of law, that said act of 1880, chapter 16, was repealed by the act of 1890, chapter 559, because the said act of 1880, chapter 16, was a valid and binding contract between the

State of Maryland and the Northern Central Railway Company, and so protected by the Constitution of the United States from impairment by any legislation of the State of Maryland.

Defendant's Prayer No. 2.

The defendant prays the court to rule as a matter of law, that if the court, sitting as a jury, shall find from the admissions of the parties and the evidence in the case, that the act of assembly of Maryland of 1880, chapter 16, was duly accepted by the
76 stockholders of the defendant company as required by said act, and the certificate of acceptance duly filed as therein required, and that the defendant company, since the passage of said act, has done all the things required of it to be done by said act, including the payment of one-half of one per cent. in each year, since the passage of said act up to the year ending January 31st, 1895, inclusive, upon the gross receipts of the defendant mentioned in said act of 1880, chapter 16, and that it tendered payment in the manner set forth in the correspondence offered in evidence by the defendant, of one-half of one per cent. upon said gross receipts for the year ending January 31st, 1896; then the plaintiff, said tender having been refused, as shown in said correspondence, cannot recover in this action any other sum than the amount so tendered, because, even though the court should hold as matter of law that the said act of 1880, chapter 16, was not a contract within the protection of the Constitution of the United States, yet the said act of 1880, chapter 16, was not repealed by the act of 1890, chapter 559.

Thereupon the court refused to grant either of the defendant's prayers.

To which refusal of the court to grant its prayers and to the action of the court in refusing to grant either of said prayers of the defendant, the defendant excepted, and prayed the court to sign and seal this its bill of exceptions; which is accordingly done on this 18th day of June, 1900.

HENRY STOCKBRIDGE. [SEAL.]

Defendant's Order for Appeal.

(Filed July 9th, 1900.)

Mr. Ogle, clerk:

Enter an appeal in this case to the court of appeals of Maryland, on behalf of the defendant, from the judgment entered therein on the 20th day of June, 1900.

BERNARD CARTER,
Att'y for Defendant.

Appellant's costs	$74 70
Appellee's costs	117 45

STATE OF MARYLAND, }
City of Baltimore, } *To wit:*

I, Robert Ogle, clerk of the superior court of Baltimore city, do hereby certify that the aforegoing is truly taken from the record and proceedings of the said court in the therein-entitled cause.

(Seal's place.) In testimony whereof, I hereunto set my hand and affix the seal of the superior court of Baltimore city aforesaid, on the 17th day of September, nineteen hundred.

ROBERT OGLE,
Clerk Superior Court of Baltimore City.

77 Whereupon as well the record and proceedings aforesaid, and the judgment given in form aforesaid, as the matters aforesaid, by the said The Northern Central Railway Company above for error assigned, being seen, and by the court of appeals here fully understood, and mature deliberation thereupon had, for that it appears to the court of appeals here, that there is no error in the record of proceedings aforesaid, nor in the giving of the judgment aforesaid: Therefore it is considered by the court of appeals here, on this 7th day of December, 1900, that the judgment aforesaid, given in form aforesaid, be in all things affirmed with costs, &c., and stand in full force and effect, the said causes for error above assigned and alleged in any wise, notwithstanding.

78 MEMORANDUM.—Judgment was affirmed in this case, on the 7th day of December, 1900, and execution awarded for the sum of $17,124.17 with interest from the 18th day of June, 1900, until paid, $117.45; costs in superior court of Baltimore city, $—, costs in court of appeals of Maryland, & costs & costs.

J. FRANK FORD,
Clerk Court of Appeals of Maryland.

And on the same day and year last aforesaid to wit: December 7th, 1900, the following opinion of the court of appeals was filed, to wit:

79 Court of Appeals of Maryland.

THE NORTHERN CENTRAL RAILWAY COMPANY }
vs.
THE STATE OF MARYLAND. }

Per Curiam:

The questions involved on this appeal are the same that were decided by this court in the case of The State of Maryland *vs.* The Northern Central Railway Company, reported in 90 Md. 497. At that time we were called upon, at the instance of the State, to review the rulings of the court below, which had granted the first prayer offered by the defendant (the railway company) and rejected the second. We reversed the lower court and awarded a new trial. At

the retrial of the case, the first and second prayers offered by
80 the defendant (being the same offered at the first trial) were rejected and judgment was entered for the plaintiff. The defendant excepted to the action of the court in refusing to grant its two prayers and prosecuted this appeal. Without repeating them, for the reasons given in the opinion reported as above stated, we think there was no error in rejecting both prayers offered by the defendant (now appellant) and will affirm the judgment.

Judgment affirmed, the costs to be paid by the appellant.

Filed December 7th, 1900.

81 Know all men by these presents, that the Northern Central Railway Company, a corporation duly incorporated under the laws of the State of Maryland, and Benjamin F. Newcomer of the city of Baltimore, in the State of Maryland, are held and firmly bound unto the State of Maryland, in and for the full and just sum of twenty thousand dollars ($20,000), current money, to be paid to the said State, or its certain attorney; to the payment whereof, well and truly to be made and done, the said The Northern Central Railway Company binds itself, its successors and assigns, and the said Benjamin F. Newcomer binds himself, his executors, administrators and assigns, firmly by these presents.

82 Whereas, the said State of Maryland has recovered in the court of appeals of Maryland at the October term 1900 thereof, a judgment against the said The Northern Central Railway Company, for the sum of seventeen thousand, one hundred and twenty-four dollars and seventeen cents ($17,124.17), upon which judgment the said The Northern Central Railway Company has applied for and obtained a writ of error to the Supreme Court of the United States.

Now the condition of the above obligation is such that if the Northern Central Railway Company aforesaid shall not cause a transcript of the record and proceedings to be transmitted to the next Supreme Court of the United States, within the time
83 required by law, and prosecute said writ of error with effect, and also satisfy and pay to the said State of Maryland, or its certain attorney, in case the said judgment shall be affirmed, as well the damages and costs adjudged by the court of appeals of Maryland aforesaid, as also all damages and costs that may be awarded by the Supreme Court of the United States; then the said bond to be in full force and virtue; otherwise of no effect.

Witness the corporate seal of the said The Northern Central Railway Company, and the signature of —— —— one of its vice-presi-

dents; and the hand and seal of the said Benjamin F. Newcomer, this second day of January, one thousand, nine hundred and one.

THE NORTHERN CENTRAL RAILWAY COMPANY,

84 (Seal's place.) By JNO. P. GREEN, *Vice-President.*

Witness as to the signature of Jno. P. Green, vice-president of the Northern Central Railway Company.
R. S. GREEN.

(Attest:) STEPHEN W. WHITE, *Secretary.*

B. F. NEWCOMER.

Witness as to the signature of B. F. Newcomer.
BERNARD CARTER.

Filed January 7th, 1901.

85 STATE OF MARYLAND, *sct:*

I J. Frank Ford, clerk of the court of appeals of Maryland, do hereby certify that the above and foregoing is a true and correct transcript of the record and proceedings, in the case of The Northern Central Railway Company *vs.* The State of Maryland, as the same remains on file in the clerk's office of the said court of appeals.

And I do further certify that the said court of appeals of Maryland, is the highest court of law or equity in said State in which a decision can be had in said case.

Seal Court of Appeals, Maryland.

In testimony whereof, I have hereunto subscribed my name as clerk of the said court of appeals, and affixed the official seal of the court on this 28th day of January A. D. 1901.

J. FRANK FORD,
Clerk Court of Appeals of Maryland.

Endorsed on cover: File No. 18,037. Maryland court of appeals. Term No. 242. The Northern Central Railway Company, plaintiff in error, *vs.* The State of Maryland. Filed January 29th, 1901.